

### **REMARKS**

Applicants have received and carefully reviewed the Office Action mailed July 1, 2004. Claims 105-123 remain pending. Reconsideration and reexamination are respectfully requested.

In paragraph 4 of the Office Action, claim 107 was objected to under 37 CFR §1.75(c) as being of improper dependent form, as the claim recited a similar limitation to that of its base claim. Claim 107 has been amended to depend from claim 105, rather than claim 113 through claim 106, such that the objection is believed overcome.

In paragraph 6 of the Office Action, claims 105, 108, 116, and 117 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,411,547 to Causey, III. After careful review, and in light of the above amendments, Applicants respectfully disagree.

The Examiner states that the recited steps including determining whether the patient has an abnormally slow heartbeat are anticipated by Causey, III seeking to treat asystole. Applicants respectfully traverse the rejection and question whether one would consider asystole, or the lack of a heart rhythm (i.e., a stopped heart) as being an abnormally slow heart rhythm. However, Applicants have amended the claims to recite pacing functions, rather than the cardioversion or defibrillation performed when no beat is present at all due, for example, to fibrillation. More particularly, claim 105 has been amended to recite pacing the patient's heartbeat. With respect to claim 117, the preamble has been amended to recite pacing a patient through a bradycardia event. The preamble in claim 117 is believed to breathe life into the claim as it indicates to one of skill in the art that repetitive treatment over at least a short period of time using relatively low amplitude pulses for pacing is recited, rather than occasional high amplitude defibrillation used to treat asystole. Therefore, the preamble of claim 117 should be considered a claim recitation patentably delimiting the claim's scope.

In light of the above, it is believed that pacing functions are positively recited in both claims 105 and 117. However, the cited Causey III reference illustrates treatment of arrhythmias using defibrillation and/or cardioversion, and does not appear to Applicants to disclose pacing functions. Therefore, independent claims 105 and 117, along with dependent claims 108 and 116, are believed to be in condition for allowance.

In paragraph 7, claims 121-122 were rejected under 35 U.S.C. §102(b) as being anticipated by Belgard et al., U.S. Patent No. 4,349,030. Claim 121 has been amended to recite implanted electrodes. Belgard et al., however, appear to merely illustrate external electric cardiac stimulation. Therefore the rejections of claims 121 and 122 are believed overcome.

In paragraph 9 of the Office Action, claim 110 was rejected under 35 U.S.C. §103(a) as being unpatentable over Causey, III, in view of Bardy, U.S. Patent No. 5,292,338. After careful review of the cited references, Applicants respectfully traverse the rejection. More particularly, as noted above, Causey, III does not disclose a pacing function with respect to an abnormally slow heartbeat, as recited in amended base claim 105. Bardy is merely cited to illustrate a particular placement position for a defibrillator. Therefore, it does not appear that the Examiner has stated a complete *prima facie* case of unpatentability, as at least one recited claim element is not disclosed. As such, withdrawal of the rejection, and allowance of claim 110, is believed appropriate.

In paragraph 10 of the Office Action, claims 118-119 were rejected under 35 U.S.C. §103(a) as being unpatentable over Causey, III, in view of U.S. Patent No. 5,331,966 to Bennett et al. After careful review of the cited references, Applicants respectfully traverse the rejection. More particularly, as noted above, Causey, III does not disclose a pacing function with respect to an abnormally slow heartbeat, as recited in amended base claim 117. Bennett et al. is cited

merely to illustrate the use of particularly placed sensing electrodes. Therefore, it does not appear that the Examiner has stated a *prima facie* case of unpatentability, as at least one recited claim element is not disclosed. As such, withdrawal of the rejections, and allowance of claims 118-119 is believed to be appropriate.

In paragraph 11 of the Office Action, claims 109, 111-112, 120, and 123 were objected to as containing allowable subject matter but depending from rejected claims. In light of the above amendments and remarks, independent base claims 105 and 117 are believed to be in condition for allowance, such that the objections are overcome.

Applicants would like to thank the Examiner for allowing claims 106 and 113-115 in paragraph 12.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

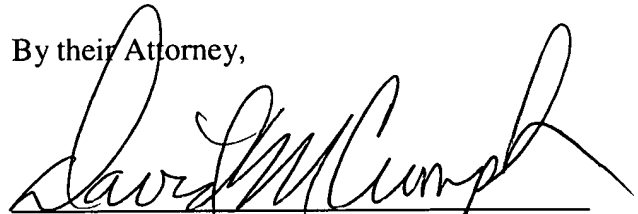
Respectfully submitted,

Gust H. Bardy et al.

By their Attorney,

Date: \_\_\_\_\_

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